

REMARKS

These amendments and remarks are filed in response to the Office Action dated June 23, 2011. For the following reasons this application should be allowed and the case passed to issue. No new matter is introduced by this amendment. The amendments to claims 1, 17-20, 23, and 24 are supported by originally filed claim 6. Claims 11 and 13 are amended to maintain proper dependency.

Claims 1, 3, 5, 8, 11-14, 16-20, and 23-28 are pending in this application. Claims 1, 3, 5, 6, 8, 11-14, 16-20, and 23-28 were rejected. Claims 1, 11, 13, 17-20, 23, and 24 are amended in this response. Claim 6 is canceled in this response. Claims 2, 4, 7, 9, 10, 15, 21, and 22 were previously canceled.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 3, 5, 6, 8, 13, 14, 17-20, and 25-28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ishida et al. (US 6,570,010 (Ishida et al. '010) in view of Ishida et al. (WO 2003/074622 using US 2005/0129721 (Ishida et al. '721) as a translation). The Examiner found that Ishida et al. '010 teach a carbonated beverage comprising lemon juice concentrate, liquid sugar (dextrose) base, flavor improving vanillyl-n-butyl ether (col. 9:36-49), and cool-feeling and refreshing-feeling substances (col. 4:56-61) including menthol and 3-(1-menthoxy)propane-1,2-diol. Ishida et al. '721 is relied on for teaching that it is known to combine two or more cool feeling substances to enhance the cooling effect (para. [0005]) and relative amounts of the two cool feeling substances (Table 1, Example 1, and paras. [0023] and [0025]).

Claims 11, 12, 16, 23, and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ishida et al. '010 in view of Ishida et al. '721 and further in view of Kaplan

(US 2002/0182296). The Examiner acknowledged that Ishida et al. '010 and Ishida et al. '721 do not disclose a fruit juice containing a dairy product. The Examiner relied on Kaplan's teaching of carbonated milk products to conclude it would have been obvious to combine Kaplan with Ishida et al. '010 and '721 to provide a dairy beverage, which is perceived to be a healthy alternative to soft drinks.

In the Response to Arguments section, the Examiner asserted that the claims are not commensurate in scope with the evidence of unexpected results. The Examiner noted that the evidence of unexpected results do not occur over the entire range of fruit-containing food, but was limited to orange juice, lemon juice, apple juice, peach juice, grapefruit juice, and grape juice. The Examiner further noted that Examples 1-(4) to 1-(6) used only 3-1-menthoxy-1,2-diol as the cool feeling substance. The Examiner further suggested that not enough examples were tested.

These rejections are traversed, and reconsideration and withdrawal thereof respectfully requested. The following is a comparison between the present invention as claimed and the cited prior art.

Ishida et al. ('010), Ishida et al. ('721), and Kaplan, whether taken in combination, or taken alone, do not suggest the claimed fruit juice-containing food product, methods for reinforcing a flavor in a fruit juice-containing food products, methods for reinforcing a flavor in a fruit juice-containing beverages, and methods for reinforcing a flavor in a fruit juice-containing dairy product because the cited references do not suggest the unexpected results obtained by fruit juice-containing food products comprising the specific mixtures of menthol and the specifically claimed one or more cool feeling substances, wherein straight fruit juice or the concentrated fruit juice is a juice of citrus fruits, apples, peaches, grapes, blueberries, raspberries, strawberries,

melons, Japanese apricots, cassis, and marumelos, as required by claims 1, 17-20, 23, and 24.

The cited references do not suggest the unexpected improvements in the fruit juice-containing food products obtained by the claimed compositions and methods. As shown in the present specification, fruit juice-containing food products according to the present invention having the specifically claimed concentration range of menthol and cool feeling substances provide an unexpectedly improved combination of light feeling in the mouth, continuation of light feeling, and heavy feeling of sweetness (see Table 3, Examples 1-(4) to 1-(6)), as compared to other fruit juice-containing food products containing menthol and cool feeling substances outside the claimed ranges.

The Examiner found the Specification does not indicate any reference to qualify the relative comparisons of "light feeling in the mouth," "continuation of light feeling," "heavy feeling of sweetness," "especially weak," "slightly positive," "strong," "especially strong," "bad taste," "normal," "slightly good taste," and "relatively good taste," and that these terms lack definition, and repeatable objective results. However, as shown in Tables 2 and 3, the combination of the claimed menthol concentration (0.009 to 0.045 parts by mass based on 1000 parts by mass of the fruit juice-containing food product) and the specific cooling substance concentration (0.001 to 0.005 parts by mass based on 1000 parts by mass of the fruit juice-containing food product) provide an unexpected combination of especially strong light feeling in the mouth, strongly continuous continuation of light feeling, and light aftertaste without heavy taste of heavy feeling of sweetness. In addition, as shown in Tables 5-1 and 5-2, the claimed combinations of menthol and cooling substances provides especially strong light feeling in the mouth and provide relatively good feeling in taste, both immediately after preparation and after

storage at 60 °C for 20 days. These test results are based on the combined evaluations of 10 individuals (5 men and 5 women) used in the sensory evaluations.

Contrary to the Examiner's assertions, there is ample support for "fruit juice." However, in order to advance prosecution of this application, the limitations of claim 6 have been added to independent claims 1, 17-20, 23, and 24. Now each independent claim recites, " the straight fruit juice or the concentrated fruit juice is a juice of citrus fruits, apples, peaches, grapes, blueberries, raspberries, strawberries, melons, Japanese apricots, cassis, and marumelos."

The present claims are further distinguishable over the cited references, because the cited prior art do not suggest the unexpected results obtained by the present invention. For example, there is ample data in the specification that the claimed amounts of menthol and cool feeling substances provide unexpected results. As shown in Table 3, the claimed amounts of menthol and cool feeling substances provide especially strong light feeling in the mouth, strongly or very strongly continuous light feeling, and relatively heavy taste or light aftertaste without heavy taste of sweetness. The examples outside of the claimed amounts of menthol and cool feeling substances have one or more negative attributes, such as especially weak, only slightly positive, or bitter light feeling in the mouth; not continuous or weakly continuous light feeling; and/or especially heavy taste and aftertaste. The Examiner's finding that terms, such as "light feeling" and "weakly continuous" lack definition and repeatable objective results, is overcome by the fact, as explained above, the test results are based on a **large** sample size, the combined evaluations of 5 men and 5 women. Thus, the sensory evaluations are well-defined and reproducible, objective results.

Although the Examiner noted that Examples 1-(4) to 1-(6) used only 3-1-menthoxy-1,2-diol as the cool feeling substance, there is sufficient support for the all the claimed cool feeling

Application No.: 10/580,070

substances. Tables 5-1 and 5-2 demonstrate that of 3-l-menthoxypropane-1,2-diol, 3-l-menthoxy-2-methylpropane-1,2-diol, and 2-1-menthoxyethane-1-ol each provide relatively good taste immediately after preparation and after storage at a composition amount within the claimed range, in contrast to other cool feeling substances.

The dependent claims are allowable for at least the same reasons as independent claim 1, and further distinguish the claimed fruit juice-containing food product.

For example, claims 25-28 are directed to specific examples in the specification (*see e.g.* - Examples 1-(5) and 1-(6)). As shown in the data in the present specification, the embodiments of claims 25-28 provide unexpectedly superior sensory evaluation results, as compared to the other embodiments.

In view of the above amendments and remarks, Applicants submit that this application should be allowed and passed to issue. If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated to expedite the prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Bernard P. Codd
Registration No. 46,429

**Please recognize our Customer No. 20277
as our correspondence address.**

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 BPC:kap
Facsimile: 202.756.8087
Date: September 20, 2011